

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

BRYAN LaFAYETTE,
Petitioner

v.

ROBERT HOFMANN,
Commissioner, Vermont
Department of Corrections,
Respondent

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File No. 1:07-CV-2

ORDER

The Magistrate Judge's Report and Recommendation was filed December 21, 2007 (Paper 8). After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Petitioner's habeas petition filed pursuant to 28 U.S.C. § 2254 is hereby DISMISSED without prejudice for lack of jurisdiction. Respondent's motion to dismiss (Paper 5) is DENIED as moot.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the petitioner has failed to demonstrate that reasonable jurists would find the Court's "assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 22nd day of January, 2008.

/s/ J. Garvan Murtha

J. Garvan Murtha
United States District Judge